

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

United States Court of Appeals  
Fifth Circuit

**FILED**

February 17, 2012

Lyle W. Cayce  
Clerk

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No. 11-20441  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

MARIANO DIAZ, also known as Mariano Diaz Arellano, also known as Mariano A. Diaz, also known as Mario Diaz,

Defendant-Appellant

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 4:11-CR-130-1

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Before BENAVIDES, STEWART, and HIGGINSON, Circuit Judges.

PER CURIAM:\*

The Federal Public Defender appointed to represent Mariano Diaz has moved for leave to withdraw and has filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *United States v. Flores*, 632 F.3d 229 (5th Cir. 2011). Diaz has filed a response. We have reviewed counsel's brief and the relevant portions of the record reflected therein, as well as Diaz's response. To the extent that Diaz challenges the conduct of counsel at sentencing, the record

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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is insufficiently developed to allow consideration at this time of his claim; such a claim generally “cannot be resolved on direct appeal when the claim has not been raised before the district court since no opportunity existed to develop the record on the merits of the allegations.” *United States v. Cantwell*, 470 F.3d 1087, 1091 (5th Cir. 2006) (internal quotation marks and citation omitted). We concur with counsel’s assessment that the appeal presents no nonfrivolous issue for appellate review. Accordingly, counsel’s motion for leave to withdraw is GRANTED, counsel is excused from further responsibilities herein, and the APPEAL IS DISMISSED. *See* 5TH CIR. R. 42.2. Diaz’s request for appointment of new counsel is DENIED.